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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

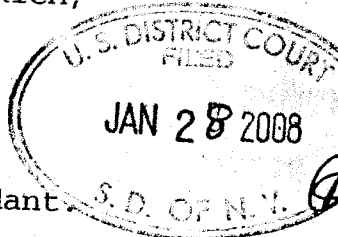
Original

UNITED STATES OF AMERICA,

v.

SANTO C. MAGGIO,

Defendant.



07 SD 312 (RLE)

07CR1196 (SHS)

New York, N.Y.
December 19, 2007
11:30 a.m.

Before:

HON. RONALD L. ELLIS,

Magistrate Judge

APPEARANCES

JAMES B. COMEY

United States Attorney for the
Southern District of New York

NEIL BAROFSKY

CHRISTOPHER GARCIA

Assistant United States Attorney

PAUL SHECHTMAN

Attorney for Defendant Maggio

SCOTT E. HERSHMAN

Attorney for Defendant Maggio

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20 Assistant United States Attorney

21 PAUL SHECHTMAN

22 Attorney for Defendant Maggio

23 SCOTT E. HERSHMAN

24 Attorney for Defendant Maggio
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1 (Case called)

2 MR. BAROFSKY: Neil Barofsky and Christopher Garcia
3 for the government.

4 Good morning, your Honor.

5 MR. SCHECTMAN: Paul Shechtman, for Mr. Maggio, with
6 Scott Hershman, for Mr. Maggio.

7 THE COURT: Okay. I understand that he is going to be
8 pleading to an information.

9 MR. SCHECTMAN: Correct, your Honor.

10 THE COURT: Has he waived indictment yet?

11 MR. SCHECTMAN: You have the paperwork. We're ready
12 to waive.

13 THE COURT: We will do those separately. Treat the
14 waiver as it should be and then I'll consider the taking of the
15 plea.

16 MR. SCHECTMAN: Sounds right.

17 COURTROOM DEPUTY: You are Santo Maggio?

18 THE DEFENDANT: Yes.

19 COURTROOM DEPUTY: Have you signed this waiver of
20 indictment.

21 THE DEFENDANT: Yes.

22 COURTROOM DEPUTY: Before you signed it did you
23 discussion it with your attorney?

24 THE DEFENDANT: Yes.

25 COURTROOM DEPUTY: Did he explain it to you?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what you are doing?

3 THE DEFENDANT: Yes.

4 COURTROOM DEPUTY: Do you understand that you are
5 under no obligation to waive indictment?

6 THE DEFENDANT: Yes.

7 COURTROOM DEPUTY: Do you understand that if you do
8 not waive indictment, if the government wants to prosecute you
9 they will have to present this case to a grand jury which may
10 or may not indict you?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you realize by that by signing this
13 waiver of indictment you have given up your right to have this
14 case presented to a grand jury?

15 THE DEFENDANT: Yes, I do.

16 COURTROOM DEPUTY: Have you seen a copy of the
17 information?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Would you like for me to read it to you?

20 THE DEFENDANT: No.

21 COURTROOM DEPUTY: How do you plead?

22 THE DEFENDANT: Guilty.

23 COURTROOM DEPUTY: The case has already been assigned
24 to Judge Stein.

25 MR. SCHECTMAN: Correct.

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1 MR. BAROVSKY: Your Honor, we consent to the defendant
2 being released on his own recognizance.

3 MR. SCHECTMAN: We don't object to that.

4 THE COURT: Technically to the information you are
5 supposed to plead "not guilty".

6 MR. SCHECTMAN: I think that is right and it is my
7 apologies.

8 THE DEFENDANT: I plead not guilty now and then later
9 of guilty.

10 MR. SCHECTMAN: Not guilty at this time, your Honor,
11 but we will be entering a guilty plea.

12 THE COURT: Objection. All right. Now, the actual
13 plea has been referred by Judge Stein; is that it?

14 MR. BAROVSKY: Yes, your Honor.

15 THE COURT: And how many counts in the information?

16 MR. BAROVSKY: Your Honor, there are four counts.

17 THE COURT: What is he pleading to?

18 MR. BAROVSKY: All four counts, Judge.

19 THE COURT: Okay. Mr. Maggio, this matter has been
20 referred to me before Judge Stein for the purpose of taking
21 your plea. Did you consent to proceed before a United States
22 magistrate judge on your felony plea allocution?

23 THE DEFENDANT: Yes.

24 THE COURT: Before you signed it did you discuss it
25 with your attorneys?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did they explain it to you?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you have an
5 absolute right to have this proceeding before a United States
6 district judge?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: You are voluntarily proceeding before a
9 United States magistrate judge?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Maggio, you are charged in a four
12 count information. Count One of the information charges you,
13 well, conspiracy to commit securities fraud, wire fraud, bank
14 fraud and money laundering and to make false filings with the
15 SEC and material misstatements to auditors in violation of
16 Title 18 U.S.C. Sections 371. This crime carries a maximum
17 sentence of five years imprisonment, a maximum fine which is
18 the greatest of either \$250,5000 or twice the gross pecuniary
19 gain derived from the offense or twice the gross pecuniary loss
20 to persons other than yourself as a result of the offense.
21 There is a \$100 special assessment and a term of supervised
22 release of three years.

23 Counts Two and Three of the information charge you
24 with securities fraud in violation of Title 15 U.S.C. Section
25 78 (J) (B) and 78 (F) (F) and Title 17 Code of Federal

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1 Regulations Section 240, 10 (B) (5) and each of those counts
2 carries a maximum sentence of 20 years imprisonment, a maximum
3 fine which is the greatest of either five million dollars or
4 twice the gross pecuniary gain derived from the offense and
5 twice the gross pecuniary loss of persons other than yourself
6 as a result of the offense. Each also has a \$100 special
7 assessment and a term of supervised release of three years.

8 Count four of the information charges you with wire
9 fraud in violation of Title 18 U.S.C. Section 1343 and carries
10 a maximum sentence of 0 years imprisonment, a maximum fine
11 which is the greatest of either \$250,000 or twice the gross
12 pecuniary gain derived from the offense, or twice the gross
13 pecuniary loss to person others than yourself as a result of
14 the offense. It carries a \$100 special assessment and a term
15 of supervised release of three years.

16 A total maximum sentence of incarceration on the
17 information is 65 years imprisonment. In addition to the
18 foregoing the Court must order restitution with respect to the
19 information and in accordance with U.S.C.

20 In addition, if you are sentenced to any period of
21 supervised release and violate the conditions of your
22 supervised release you may be sentenced to all or part of the
23 supervised release as authorized by statute without any credit
24 for time already served on supervised release.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: So you understand these penalties as I've
3 read them to you?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Have you seen a copy of the information in
6 which the government makes these charges against you?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Have you discussed it with your attorneys?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you prepared to enter a plea today?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Santo Maggio, how do you plead?

13 THE DEFENDANT: Guilty.

14 THE COURT: Mr. Maggio, before I can recommend that
15 your plea be accepted I must determine that you understand the
16 plea and its consequences, that the plea is voluntary and that
17 there's a factual basis for the plea. For that purpose I must
18 ask you a number of questions and your answers must be under
19 oath. Do you understand that the answers you give under oath
20 may subject you to prosecution for perjury if you do not tell
21 the truth?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Raise your right hand.

24 (Defendant Santo C. Maggio sworn)

25 THE COURT: Thank you. Please state your full name

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1 for record.

2 THE DEFENDANT: Santo C. Maggio.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: I finished high school.

5 THE COURT: Are you currently being treated by a
6 doctor or psychiatrist for any reason?

7 THE DEFENDANT: No.

8 THE COURT: Are you currently on any medications which
9 might effect you in being alert for this proceeding?

10 THE DEFENDANT: No.

11 THE COURT: Are you any difficulty seeing, hearing or
12 understanding anything that I am saying?

13 THE DEFENDANT: No.

14 THE COURT: Have you had enough time to discuss with
15 your attorneys how you wish to plead?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with your attorneys?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand what the government says
20 that you did?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that have you a right to
23 plead not guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you have a right to

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1 trial by jury on these charges?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that if you are to plead
4 not guilty and go to trial you would be presumed innocent until
5 the government proved your guilt beyond a reasonable doubt?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Do you understand that if you were to go
8 to trial you would have a number of important constitutional
9 rights including the right to be represented by counsel and to
10 have counsel appointed for you if you cannot afford an
11 attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that at trial you cannot
14 be forced to testify against yourself?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand at a trial you would
17 have the right to confront and cross-examine witnesses called
18 by the government?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that at a trial you
21 would have the right to testify yourself and to call witnesses
22 on your behalf and to compel their attendance by subpoena if
23 necessary?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that if your guilty plea

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1 is accepted there will be no trial of any kind and the only
2 remaining steps in your case will be a presentence report and
3 sentencing by Judge Stein?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you discussed with your attorney the
6 role that the sentencing guidelines play in sentencing?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that the district judge
9 will retain discretion regardless of what calculations there
10 are under the guidelines?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that the calculation
13 under the guidelines will take into account a number of factors
14 including the actual conduct in which you engaged, any victims
15 of the offense, the role that you played in the offense,
16 whether or not you have accepted responsibility for your acts,
17 whether you have any criminal history or whether you have
18 engaged in any obstruction of justice; do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Between now and the date of sentencing the
21 probation department will conduct an investigation and will
22 prepare a presentence report. Your attorney, the government
23 and Judge Stein will receive copies. Both your attorney and
24 the government will have the opportunity to object if they
25 believe anything in the report is inaccurate; do you understand

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1 that?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that until the
4 presentence report is prepared neither your attorney nor the
5 government, nor Judge Stein will be able to determine precisely
6 what range of penalties will be calculated under the
7 guidelines.

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand than regardless of
10 calculation and the guidelines your sentence cannot exceed the
11 maximums that I advised you of earlier?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that under certain
14 circumstances both you and the government may have the right to
15 appeal the sentence imposed.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if the sentence is
18 more severe than you expected you will be bound by your guilty
19 plea and will not be permitted to withdraw it?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand that parole has been
22 abolished and that if you are sentenced to any term of
23 imprisonment you will be required to serve the entire term?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Maggio, are you a citizen of the

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1 United States?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: Mr. Maggio, I have been handed up a plea
4 agreement from your case. Have you had an opportunity to
5 review and go over this agreement with your attorneys?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that one of the
8 provisions in the plea agreement is that you admit the
9 forfeiture allegation in the information and that you agree to
10 forfeit to the United States a sum of money equal to two
11 billion, four hundred million dollars?

12 THE DEFENDANT: Yes.

13 THE COURT: That is what it says, right?

14 MR. BAROFSKY: Yes, your Honor, that number is
15 correct.

16 Your Honor, the plea cooperation agreement also
17 provides, however, that in satisfaction of that amount there
18 are certain schedules attached to the plea agreement which the
19 government will accept in satisfaction of that judgment.

20 MR. SCHECTMAN: We don't have quite that much, your
21 Honor.

22 THE COURT: Okay. I thought had I too many zeros
23 myself at first.

24 MR. SCHECTMAN: No, you read it right.

25 THE COURT: That represents the amount of the

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1 proceedings obtained as a result of the offense; do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: You also understand that any forfeiture
5 would not be treated as satisfaction of any fine, restitution,
6 cause of imprisonment or any other penalty the Court may
7 impose?

8 THE DEFENDANT: Yes.

9 THE COURT: And as indicated in the agreement, there
10 is a scheduled pay of assets. You have seen the schedule and
11 you have gone over it with your attorneys?

12 THE DEFENDANT: Yes.

13 THE COURT: To make sure that it's accurate?

14 THE DEFENDANT: Yes.

15 MR. SCHECTMAN: Judge, I might point out for the
16 record there is a Schedule B as well, which are assets that are
17 in Mrs.~Maggio's name that are being forfeited as part of the
18 plea and there is a separate agreement that need not concern
19 your Honor in this matter involving Mrs.~Maggio.

20 THE COURT: Is that correct, Mr. Maggio, there is also
21 a Schedule B?

22 THE DEFENDANT: Yes.

23 THE COURT: That's Mrs.~Maggio's assets?

24 THE DEFENDANT: Yes.

25 THE COURT: That is also covered by the agreement that

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1 you made with the government?

2 THE DEFENDANT: Yes.

3 THE COURT: You are also understand the agreement
4 provides that you cooperate fully with the United States
5 attorney's office?

6 THE DEFENDANT: Yes.

7 THE COURT: And that in exchange for that cooperation,
8 assuming that the office determines that you have made full and
9 accurate disclosures to them, the government has agreed that it
10 will submit a motion pursuant to Section 5K1.1 of the
11 sentencing guidelines in your favor?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if for any reason
14 the government determines that it will not file such a motion
15 you will not be allowed to withdraw your plea?

16 THE DEFENDANT: Yes.

17 THE COURT: You understand that even if the government
18 files such a motion sentencing will still be at the sole
19 discretion of the Court?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: Is there anything else in the agreement
22 that I might want to highlight?

23 MR. BAROFSKY: No, your Honor.

24 THE COURT: All right. Other than the representations
25 in this agreement, have any promises been made to you by anyone

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1 to influence you to plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: This constitutes the sole agreement that
4 you have?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone promised you a specific
7 sentence if you plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone made any threats to you to
10 influence you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Are you making this plea voluntarily of
13 your own freewill and choice?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: The elements of the offense is?

16 MR. BAROFSKY: Your Honor, for Counts One defendant's
17 is charged with conspiracy. The government would be required
18 to prove each of the elements beyond a reasonable doubt.
19 First, that there is an assistance of a an agreement or
20 understanding to commit one of the objects charged in the
21 information.

22 Second, the defendant knowingly became a member of
23 that agreement or understanding.

24 And third, that one of the conspirators or
25 coconspirators or Mr. Maggio knowingly committed at least one

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1 overt act in furtherance of the conspiracy during its life.

2 With respect to the securities frauds counts in two
3 and three, first, the defendant in connection with the purchase
4 or sale of securities, here the notes that are described in
5 Count Two and the common stock of Revko that's referenced in
6 Count Three did one or more of the following: Employed a
7 devise, scheme or artifice to defraud or made an untrue
8 statement of a material fact or admitted to state a material
9 fact which made what was said under the circumstances
10 misleading or engaged in an act, practice or course of business
11 that operated or would operate as a fraud or deceit upon a
12 purchase of a seller for securities.

13 Second the defendant acted knowingly, willfully with
14 the intent to defraud.

15 And third, the defendant used or caused to be used any
16 means or instruments of transportation or communication in
17 interstate commerce or use of the mails in furtherance of that
18 fraudulent conduct.

19 and with respect to the Count Four wire fraud, first,
20 that there was a scheme or artifice to defraud that existence
21 the defendant must have participated in the scheme with the
22 intent to defraud misrepresentations or omissions must have
23 related to a material fact, that the scheme was executed to
24 obtain money or property.

25 And finally, that in execution of the scheme the

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1 defendant used or caused to be used interstate wires or that
2 such use was reasonably foreseeable to him.

3 THE COURT: Mr. Maggio, did you hear that recitation?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you understand that if the government
6 were to proceed to trial against you it would have the burden
7 of proving each element for each offense, that is, each count
8 beyond a reasonable doubt.

9 THE DEFENDANT: Yes.

10 THE COURT: Did you commit the offenses for which you
11 have been charged, Mr. Maggio?

12 THE DEFENDANT: Yes.

13 THE COURT: Tell me what you did.

14 MR. SCHECTMAN: Judge, if it's acceptable to you
15 Mr. Maggio has written out a statement that I think speaks to
16 all four crimes.

17 THE COURT: Considering the complexities here I'll
18 allow him to read and then if it's not he could fill in the
19 gaps.

20 THE DEFENDANT: Your Honor, from the late 1990s to
21 October 2005 I was a senior executive at Revko Ink. During
22 that period I participated with others to hide the true
23 financial health of Revko from banks, counter-parties, auditors
24 and investors. With my knowledge and active participation
25 Revko's substantial losses were covered up as revenues padded

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1 and certain operating expenses were moved off its book. Among
2 the acts I personally engaged in the signing of loan agreements
3 referencing paragraphs 61-D and 61-P of the indictment.

4 As a result of my conduct and that of my
5 coconspirators false financial statements were issued to obtain
6 debt financing from the public including 9 percent senior
7 subordinated notes referenced in Count Two of the indictment.

8 To consummate the sale of 57 percent of Revko to a
9 group headed by Thomas H. Lee in 2004 and to obtain \$800
10 million in bank financing the same year and to effect the Revko
11 initial public offering in 2005. Moreover, with my knowledge
12 false financial statements were filed with the SEC including
13 form 10K referencing Count Four. The mails and interstate
14 wires were used as part of the fraudulent scheme.

15 I deeply regret my conduct and the harm that it has
16 caused.

17 THE COURT: First of all, with respect to all of the
18 activities that you've indicate you participated in it
19 knowingly?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Where did this take place.

22 THE DEFENDANT: In New York, New York. Manhattan, New
23 York.

24 THE COURT: You said coconspirators, so other people
25 had agreed with you to effectuate this scheme?

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1 THE DEFENDANT: Yes.

2 THE COURT: And the intent of this scheme was to
3 defraud?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I know you mentioned the notes and I
6 think you mentioned the 2005 initial offering that was
7 addressed to Count Three of the information, that is, whether
8 or not you had a scheme to defraud people based on the value of
9 the stock?

10 THE DEFENDANT: Correct, your Honor.

11 THE COURT: Mr. Maggio?

12 THE DEFENDANT: Yes.

13 THE COURT: That did involve false statements?

14 THE DEFENDANT: Yes.

15 THE COURT: False filings that you've indicated?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, you said you used the mails which
18 interstate -- I mean, you used the mails, a phone? How did you
19 use --

20 THE DEFENDANT: Yes, used regular mail. We used
21 Express Mail. We used e-mail all to effect the scheme.

22 THE COURT: You submitted false statements in the
23 mail?

24 THE DEFENDANT: False statements, loan agreements as
25 referenced here, yes.

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1 THE COURT: Okay. Any --

2 MR. BAROFSKY: Your Honor, I'll just represent to the
3 Court that with respect to Count Four, the wire transmission
4 did in fact originate in the Southern District of New York in
5 Manhattan and was wired outside of the Southern District to
6 Virginia.

7 THE COURT: Anything else?

8 MR. SCHECTMAN: Nothing, your Honor.

9 MR. BAROFSKY: No, your Honor.

10 THE COURT: I am depending on you here. Does any
11 either counsel know of any reason why I should not recommend
12 that this plea not be accepted?

13 MR. BAROFSKY: No, your Honor.

14 MR. SCHECTMAN: No, your Honor.

15 THE COURT: Based on defendant's allocution and the
16 recommendations by the government I find that the defendant
17 understands the nature, the charges and consequences of his
18 guilty plea. I also find that the plea is voluntary and that
19 there is a factual basis for the plea. I, therefore, recommend
20 that the plea be accepted and direct that a presentence report
21 be reaped.

22 Sentencing will take place before Judge Stein on.

23 MR. BAROFSKY: May 9, at 2 p.m.

24 THE COURT: Is there anything else that needs to be
25 addressed today.

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1 MR. BAROVSKY: Not from the government, your Honor.

2 MR. SCHECTMAN: Not from the offense.

3 THE COURT: We are adjourned.

4 o o o